HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 2047 OF 2005

PETITIONER

President, Jai Maa Mahamaya Machhua Sahkari Samiti Marayadit, Gotatola, Rajnandgaon, Represented by Ballu Ram Nishad S/o Shri Umendi Ram Nishad, aged About 37 years, President, Jai Maa Mahamaya Machhua Sahkari Samiti Marayadit, Registered Office at Gotatola, Block Mohala, District Rajnandgaon (C.G.)

versus

RESPONDENTS

1. State of Chhattisgarh, Through The Secretary, Department of Panchayat & Rural Development, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. The Director, Department of Panchayat & Rural Development, Near D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
3. The Collector, District Rajnandgaon, Rajnandgaon, C.G.
4. The Chief Executive Officer, Janpad Panchayat Mohala District Rajnandgaon,
5. Trilochan S/o Jagat Ram Kewat, aged about 33 Years, Representing Machhua Sahkari Samuh, Gram Panchayat Gotatola, Block Mohala, District Rajnandgaon, C.G.

Present : Mr. Satyendra Sahu, learned counsel for the petitioner.
Mr. Yashwant Singh, learned G.A., for the Stat of C.G.
Ms. Samta Jain, learned counsel for respondent No.4.
Mr. Bharat Rajput, learned counsel for respondent No.5.

ORAL ORDER
(Passed on 31st January, 2006)

The dispute brought before the Court by way of this writ petition relates to the entitlement of the rival parties to fishing right in a tank situate in Gotatola, Block Mohala in Rajnandgaon district which tank is popularly called as 'Gotatola Tank'. It appears that initially the fishing right was granted to the fifth respondent on 30/06/1998 and that right was renewed on 30/06/2001 for a further period ending 30/06/2004. The petitioner herein, being aggrieved by the action of the fourth respondent in renewing fishing right in favour of the fifth respondent for a period up to 30/06/2004, preferred a revision to the Collector, the third respondent herein. When the said revision filed by the petitioner was pending before the third respondent, it appears that the renewal of lease granted in favour of the fifth respondent up to 30/06/2004 was cancelled by the fourth respondent by an order dated 30/08/2002. In the circumstance, the fifth respondent also filed revision to the third respondent against the cancellation. The third respondent clubbed both the revisions and by his order dated 28/01/2003 remanded the proceedings to the fourth respondent to consider the question of grant of renewal of fishing right in terms of the norms and guidelines issued by the Department. The fourth respondent did not dispose of the proceedings within six months after the remand. In the circumstance, the petitioner herein, taking advantage of certain guidelines contained in the circular dated 18/07/2003, marked as Annexure-P/5, moved an application before the third respondent for grant of fishing right and the third respondent entertaining the said application of the petitioner made an order on 17/01/2004 granting fishing right to the petitioner for a period of five years. The fifth respondent being aggrieved

by the said order preferred an appeal to the Director, Department of Panchayat and Rural Development, the second respondent herein. The second respondent dismissed the appeal and confirmed the order of the third respondent by his order dated 05/05/2004. The fifth respondent filed a writ petition namely W.P. No.1351 of 2004 against that order in this Court and this Court by its order dated 04/06/2004 disposed of the writ petition reserving liberty to the petitioner to prefer a revision to the State Government against the order of the above order of the second respondent. Accordingly, the fifth respondent preferred revision to the first respondent and the first respondent by the impugned order allowed the revision and granted fishing right to the fifth respondent for the period ending 30/06/2005. This writ petition is directed against the above order of the Government.

(2) I heard learned counsel for the parties. If I may say so, there was a serious flaw on the part of the third respondent in granting fishing right to the petitioner herein vide order dated 17/01/2004 for a period of five years. I say this, because, the extension of lease of fishing right granted by the fourth respondent on 30/06/2001 up to the period ending 30/06/2004 was admittedly assailed by the petitioner herein before the third respondent. As already pointed out supra, the revision filed by the petitioner and the fifth respondent herein clubbed and heard together and a common order was made by the third respondent remanding the proceedings to the fourth respondent for reconsideration of their claims. When the matter stood thus, the petitioner herein without making the fifth respondent as a party respondent moved an application before the Collector and sought grant of lease of fishing right for a period of five

years. In that view of the matter, no exception could be taken to the order of the Government dated 09/05/2005. After 30/06/2005 admittedly fishing right in Gotatola Tank was not leased to anyone else. Even the fifth respondent in law cannot claim fishing right beyond 30/06/2005. Therefore, the fishing right of the subject tank has to be auctioned in accordance with law. In that view of the matter, while dismissing this writ petition, I direct respondents 3 and 4 to take up appropriate immediate steps to auction the fishing right of the "Gotatola Tank" strictly in accordance with law. No costs.

Sd/-
Chief Justice

Brajesh